

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 Javier Castillo,

11 Plaintiff,

12 v.

13 WCC Superintendent,

14 Defendant.

CASE NO. 3:18-cv-05796-RBL-JRC

ORDER

15
16 Before the Court is plaintiff's motion for appointment of counsel. Dkt. 17. Defendants
17 filed a response opposing plaintiff's motion. Dkt. 18.

18 There is no constitutional right to appointed counsel in a § 1983 civil action, and whether
19 to appoint counsel is within this Court's discretion. *Storseth v. Spellman*, 654 F.2d 1349, 1353
20 (9th Cir. 1981); *see United States v. \$292,888.04 in U.S. Currency*, 54 F.3d 564, 569 (9th Cir.
21 1995). Appointment of counsel for indigent civil litigants under 28 U.S.C. § 1915(e)(1) requires
22 "exceptional circumstances." *See Rand v. Roland*, 113 F.3d 1520, 1525 (9th Cir. 1997) (citing
23 former 28 U.S.C. § 1915(d) (1996)), *overruled on other grounds*, 154 F.3d 952 (1998). To
24 decide whether exceptional circumstances exist, the Court must evaluate "both 'the likelihood of

1 success on the merits [and] the ability of the [plaintiff] to articulate his claims *pro se* in light of
2 the complexity of the legal issues involved.” *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th
3 Cir. 1986) (quoting *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983)). “Neither of these
4 factors is dispositive and both must be viewed together[.]” *Id.*

5 Plaintiff alleges that he cannot afford to hire an attorney, no attorney will take his case,
6 the issues are complex, he speaks and writes limited English, and has no legal training, and he is
7 currently housed in maximum custody with limited access to the law library. Dkt. 17.

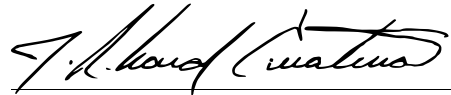
8 Here, plaintiff has not shown that he is likely to succeed on the merits of his case or
9 shown an inability to articulate his claims in a fashion that is understandable to the Court. For
10 example, although plaintiff alleges he speaks and writes “very limited English,” plaintiff does
11 not allege that he is *unable* to read, write, or understand English. Dkt. 17 at 1-7. Moreover,
12 plaintiff has clearly articulated his claims in two complaints and in various motions, *see* Dkts. 5,
13 6, 8, 9, 17, thus, his allegations that he is not proficient in the English language are inconsistent
14 with the record, *see id.* His pleadings before the Court demonstrate that he is able to understand
15 the legal standards applicable to his § 1983 claims and communicate the factual basis for those
16 claims. *See id.*

17 In addition, this is not a complex case nor do plaintiff’s § 1983 claims entitle him to
18 representation. *See Storseth*, 654 F.2d at 1353. “Most actions require development of further
19 facts during litigation and a *pro se* litigant will seldom be in a position to investigate easily the
20 facts necessary to support the case. If all that was required to establish successfully the
21 complexity of the relevant issues was a demonstration of the need for development of further
22 facts, practically all cases would involve complex legal issues.” *Wilborn*, 789 F.2d at 1331. The
23 Court also notes “[p]laintiff’s incarceration and limited access to legal materials are not
24

1 exceptional factors constituting exceptional circumstances that warrant the appointment of
2 counsel. Rather, they are the type of difficulties encountered by many pro se litigants.” *Dancer v.*
3 *Jeske*, 2009 WL 1110432, *1 (W.D. Wash. Apr. 24, 2009).

4 Thus, Court finds that plaintiff has not shown the exceptional circumstances required for
5 the appointment of counsel. Plaintiff’s motion to appoint counsel (Dkt. 17) is therefore denied
6 without prejudice.

7 Dated this 11th day of July, 2019.

8
9
10 

11 J. Richard Creatura
12 United States Magistrate Judge
13
14
15
16
17
18
19
20
21
22
23
24